son C.J. (as he then was) delivering the judgment of the Court of Appeal had no hesitation in following the decision in the case of *Christopher* v. *Croll*[2] in the construction of rule 15 of Order 58 which is equivalent to rule 13 of the 1963 Rules. He referred to a passage from the judgment of Lord Esher, M.R. which reads thus:

"Rule 1 of Order LVIII says that 'all appeals should be brought by notice of motion', and rule 15 provides that no appeal from a final judgment in an action shall be 'brought' after the expiration of a year. This seems to show that the appeal is 'brought' when the notice of appeal is served on the respondent."

Similarly in this case the mere filing of the notice of appeal is not sufficient compliance with rule 13. It must also be served on the respondent as required by rule 7 and failure to do so within one month precludes the applicant from appealing unless special leave of the full court is given under rule 13.

It is necessary to consider whether special leave should be given in this case. The affidavit in support of the notice of motion is that of Mr. Foo Say Ghee, the applicant's solicitor. In paragraph 16 Mr. Foo Say Ghee said that from February 9, 1973 until March 26, 1973 he was not in a proper and normal state of mind to conduct his office work. This was because he was personally involved in matters which have nothing to do with the applicant's case. In such a state of mind he said he inadvertently omitted to instruct his staff to serve the notice on the respondent or the respondent's solicitors. Here is a clear admission that the failure to serve the notice was due to the solicitor's mistake. Needless to say that such mistake is not a ground for granting special leave. That must be so for the obvious reason that it is not possible to draw a dividing line between a mistake which can support the exercise of a discretionary power and that which cannot. A mistake is a mistake whatever may be the reason for it. As to whether or not Mr. Foo's mistake amounts to negligence we express no opinion.

Mr. Wilson who argued this motion has submitted that this is not a case in which special leave is required. What we have said earlier regarding rules 7 and 13 of the 1963 Rules is sufficient to show that special leave is required. Counsel was apparently of the view that rule 73 of the 1963 Rules or rule 7 of Order 64 of the Rules of the Supreme Court which gives the court power to enlarge time is to be read independently of rule 13 so that the failure to serve the notice in this case can be looked upon as a mere irregularity which can be cured simply by payment of costs. We do not agree for the reasons already stated.

Lastly, the point was taken that the respondent has not been prejudiced by the failure to serve the notice. See paragraph 25 of the affidavit. It is true that as early as February 14, 1973 the respondent's solicitors were informed by letter that the notice of appeal was being filed in the court and that a copy would be served. But in our view the mere sending of the letter is not enough. Rule 6(3) of the 1963 Rules provides that the notice of appeal shall substantially be in Form I. Rule 7 requires the notice to be served and rule 32(1) prescribes the mode of effecting such service. In view of these rules we must say that the point was not well taken.

For the reasons stated the application for extension of time was refused.

Order accordingly.

Solicitors: *Foo Say Ghee & Co.; Wan Mustapha & Co.*

TRIPTIPAL SINGH v. PUBLIC PROSECUTOR

[A.Cr.J. (Chang Min Tat J.) November 24, 1973]
[Penang — Criminal Appeal No. 54 of 1973]

Criminal Law and Procedure — Charge of using threatening, abusive and insulting words whereby a breach of the peace was likely to be occasioned — Whether charge bad for duplicity — Contradictions and discrepancies in evidence — Matter of credibility for trial judge — Minor Offences Ordinance, 1955, s. 14.

In this case the appellant had been convicted on a charge of using threatening, abusive and insulting words on a police officer whereby a breach of the peace was likely to be occasioned, an offence under section 14 of the Minor Offences Ordinance, 1955. On appeal it was argued (a) the charge was bad for duplicity; and (b) that in view of the contradictions and discrepancies in the evidence of the complainant he was not a witness worthy of credit, on whose evidence it would be safe to found a conviction.

Held: (1) section 14 of the Minor Offences Ordinance 1955 creates one offence, that of conduct tending to provoke a breach of the peace. The charge in this case was not bad for duplicity;

(2) the question in regard to contradictions and inconsistencies in the evidence was basically one of credibility and was essentially one for the trial judge. The appeal court could not therefore interfere with the decision of the trial judge.

Cases referred to:-

(1) *Vernon* v. *Paddon* [1973] 1 W.L.R. 663.
(2) *Reg.* v. *Clow* [1965] 1 Q.B. 598.
(3) *Khoon Chye Hin* v. *Public Prosecutor* [1961] M.L.J. 105.
(4) *R.* v. *Panayiotou* [1973] 3 All E.R. 112 at p. 117.

CRIMINAL APPEAL.

Lim Ewe Hock for the appellent.

T. Selvanthiranathan (Deputy Public Prosecutor) for the respondent.

Chang Min Tat J.: The appellant was at the conclusion of his trial at the Sessions Court in Penang convicted on the following alternative charge:

"That you on the 9th of March, 1972 at about 3.15 p.m. at the ground floor of Police Headquarters, Penang Road, in the District of Georgetown, in the State of Penang, did use threatening, abusive and insulting words on A.S.P. Ariffin bin Hj. Mohd. Aris to wit by uttering the words:

'Shut up, don't talk about section 127A to me. I demand to see my client or else I will take up this matter.' 'You are trying to be funny, one of these days I will see that you get sacked from the Police Force,' 'You tap my client, I will sue you in court, I know that you have been beating up my client.'

Whereby a breach of peace was likely to be occasioned and you have thereby committed an offence punishable under section 14 of the Minor Offences Ordinance No. 3 of 1955."

and fined $50 in default 1 month's imprisonment. The fine was paid. The appeal was from the conviction.

A first ground of appeal was that the charge was bad for duplicity. An objection to this charge on this ground was taken at the commencement of the

trial and if I may say so, out of respect, correctly taken at this stage. The matter did not appear however to be strenuously pursued and the Deputy Public Prosecutor who prosecuted considered it sufficient merely to contend that it was not. The learned President Sessions Court ruled against the submission, but without giving his reasons for his decision. He also did not deal with the objection in his grounds of judgment.

Mr. Lim Ewe Hock who now appeared for the appellant thought that having regard to section 448 of the Criminal Procedure Code (S.S.) a charge that on the face of it contained two offences was fatal to the prosecution only if it had occasioned a failure of justice. As I understood him, he did not press the point, but of course, if the charge was not bad for duplicity, then no question arose whether there had been any miscarriage of justice.

On this ground, I am fortunate in having my attention drawn to a decision that came out after the instant case was decided in the lower court. It is the case of *Vernon* v. *Paddon*.[1] The Divisional Court of the Queen's Bench in England had to decide whether a charge of using threatening and insulting words and behaviour whereby a breach of the peace was likely to be occasioned, contrary to section 5 of the Public Order Act 1936, was bad for duplicity. Now this particular section as amended reads as follows:

"Any person who in any public place or at any public meeting (a) uses threatening, abusive or insulting words or behaviour . . . , with intent to provide a breach of the peace or whereby a breach of the peace is likely to be occasioned, shall be guilty of an offence."

On the construction of this section, Melford Stevenson J. had this to say, at p. 666:

"No one in my view can read those words without realising that what the section is aimed at is the punishment of any form of human conduct which is intended to provoke a breach of the peace or whereby a breach is likely to be occasioned. That is the essential feature of the offence. The fact that the adjectival phrases, and they plainly are adjectival phrases, used to describe the behaviour or conduct which may result in a breach of the peace, are expressed disjunctively does not in my view militate at all against the view that this action is aimed at one offence."

He went on to say:

"Whether that construction be right or wrong, I personally have no doubt that in a case such as this which springs from one clearly identifiable incident described in the evidence, there is no useful purpose to be served by requiring the prosecution to dissect the constituent elements of the offence so that words and behaviour are separately identified, so that the question whether they are threatening or abusive is separately alleged and proved. To do that, it seems to me, would be to accept a legalistic view of this section which would deprive it of its real purpose and impose on those who have to enforce it a duty which is wholly unnecessary and can be embarrassing."

But after considering *Reg* v. *Clow*[2] where a charge for driving at a speed dangerous to the public and driving in a manner dangerous to the public was held not to be bad for duplicity, the learned judge expressed himself to be clearly of the opinion that this section created one offence, that of "conduct conducive to breaches of the peace," as described in the margin of the section.

Mackenna J. was of the same mind and for the same reasons, but Forbes J. who was the third member of the Divisional Court held that the section created two separate offences, using words or using behaviour. He conceded however that there might be occasions when it might be difficult to dissect the two but held that on the facts that was not such a case, without going on however to consider what would be the effect in such an event.

Our local section, section 14 of the Minor Offences Ordinance No. 3 of 1955, reads

"Any person who uses any indecent, threatening, abusive or insulting words, or behaves in a threatening or insulting manner . . . with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned, shall be liable to a fine not exceeding one hundred dollars."

The marginal note is "insulting behaviour."

There are two differences. They are (1) our section does not limit the offence to a public place or a public meeting and (2) the description of the offence is "insulting behaviour" as against "conduct conducive to breaches of the peace." But, to my mind, there can be no doubt whatsoever that the offence is provoking or occasioning a breach of the peace.

With respect, I adopt the construction by the majority of the Divisional Court in *Vernon* v. *Paddon*, *supra*, and for the same reasons, hold that this section creates one offence, that of conduct tending to provoke or occasion a breach of the peace. The charge is of using words. It is in my view not possible to compartmentalise the words and I therefore take the view that the charge is not bad for duplicity.

All the other objections to the judgment centred on the creditability of the complainant, and it was submitted at length and with some fervour that in view of the very manifest contradictions and discrepancies in his evidence, he was not and could not be a witness worthy of credit, on whose evidence it would be safe to found a conviction. The learned President Sessions Court had himself in his grounds of decision listed several discrepancies, but except for one, in respect of which he applied the famous dictum in *Khoon Chye Hin* v. *Public Prosecutor*,[3] he considered the witness to be a witness of truth. Learned counsel for the appellant took me on a more detailed examination of the evidence and endeavoured to point to further discrepancies. It is out of respect to his submission that I took time to read through the notes of evidence again. However in the course of several readings and with the note I had made of the various discrepancies pointed out by the learned counsel for the appellant before me, I find myself coming back, time and again, to the question whether I could arrive at a different decision without having the advantages of seeing and hearing the witness, on a question which is basically one of credibility and which therefore depends so largely on the manner in which the evidence was given and the view taken of it. It was therefore with some relief that I came across this passage in the judgment of Scarman L.J. in *R.* v. *Panayiotou*: [4]

"(4) *Contradictions in the evidence of the police.* The case against the appellants largely depended on the evidence of police officers. In particular, the case against Antoniades depended on what he was alleged to have said and done on 23rd February, first outside the Tottenham Court Road tube station and later in the police station. In the course of the trial a number of inconsistencies developed in the police evidence; and the defence stressed discrepancies between police evidence and the evidence of Mrs. Piasecka. Further, one officer admitted to having made a mistake. A great deal was sought

to be made at the trial of these discrepancies; and in the appeal to this court the summing-up was criticised for failing to put them adequately before the jury. This sort of point is essentially one for the jury who heard the evidence, saw the witnesses, and had the benefit of counsel's final speeches as well as the summing-up. The trial judge drew attention to the existence of the discrepancies, while declining to recite them in detail; and at the very outset of his summing-up he reminded the jury that the mere fact that he did not mention a matter did not deprive it of importance. In our judgment, there is nothing in the point.

The appeal is dismissed.

Appeal dismissed.

CHIA CHENG HO & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Chang Min Tat J.) November 24, 1973]
[Penang — Criminal Appeal No. 62 of 1973]

Criminal Law and Procedure — Possession of forged currency notes — Certificate signed by Deputy Governor of Bank Negara — Authorization by Governor of Bank Negara not produced — Sufficient extrinsic evidence of forgery — Presumption — Evidence Act, 1950 (Act 56), s. 79 — Penal Code, s. 489C — Criminal Procedure Code (S.S. Cap. 21), s. 428.

In this case the appellants appealed against their conviction on a charge of being in possession of forged currency notes. At the trial a certificate of the Deputy Governor of the Bank Negara issued under section 428 of the Criminal Procedure Code was produced. It was stated in the certificate that the Deputy Governor was duly authorised by the Governor to sign the certificate but the authority was not produced.

Held, dismissing the appeal: (1) the proper time to raise any objection on the admissibility of the certificate of the Deputy Governor was at the time when the certificate was adduced in evidence. If on such objection is raise then the court will presume that the Deputy Governor possessed such authority;

(2) in any event there was sufficient evidence apart from the certificate to show that the notes were forged.

Cases referred to:-

(1) *Shum Wai Tong & Anor.* v. *Public Prosecutor* [1972] 1 M.L.J. 196.

(2) *Rex* v. *Wong Kiang Chin* [1938] M.L.J. 178.

(3) *In re Tan Ah Chuan & Anor.* [1954] M.L.J. 135.

(4) *Mohammad Hanifah* v. *Public Prosecutor* [1956] M.L.J. 83.

(5) *Chia Han Kiat* v. *Public Prosecutor* [1937] M.L.J. 261.

CRIMINAL APPEAL.

Yeap Ghim Guan for first appelent.

R. Rajasingam for the second appelent.

T. Selvanthiranathan (Deputy Public Prosecutor) for respondent.

Chang Min Tat J.: The appellants were convicted on a joint charge of having in their possession forged currency notes, an offence punishable under section 489C of the Penal Code. The charge read "possession of forged currency notes, to wit $15,000." Factually forged currency notes have no legal worth, compare the charge in *Shum Wai Tong & Anor.* v. *Public Prosecutor*,[1] but no one was mistaken that the charge concerned possession of 300 forgeries of Singapore $50 currency notes. The sentence was 4 years' imprisonment on each accused.

The first and main ground of appeal from the conviction was that there was no evidence or no sufficient evidence at the close of the case for the prosecution that the notes in question were forged, which would put the appellants to the defence or convict them. The attack was aimed at the certificate of the Deputy Governor of Bank Negara Malaysia issued under section 428 of the Criminal Procedure Code (S.S. Cap. 21). In the certificate, it was averred that he had been duly authorised by the Governor to sign such certificates and he certified that the 300 Singapore $50 notes were all forgeries.

The certificate was adduced by the investigating officer but the authority was not produced. The authority was required by law to be in writing and in the nature of things, would be a general authority until revoked and would not be limited to any one case.

There was absolutely no challenge at this stage of this evidence, but at the close of the case of the prosecution, it was strenuously suggested that the certificate was not admissible. Why the challenge was not made and whether it should not have been at the moment when it was sought to introduce the certificate into evidence must now be matters which I shall have to leave to learned defence counsel to decide.

Now section 428 as amended reads

"Where in any criminal proceeding it is necessary to decide whether a currency note is or is not forged a certificate signed by the Governor of the Central Bank or any officer specially authorised in writing by him that he is satisfied by personal examination that such note is or is not forged, shall be conclusive evidence that such note is or is not forged, as the case may be, and neither the Governor nor any such officer shall be cross-examined with regard to the contents of such certificates, unless the court otherwise orders."

For the appellants, both counsel relied on the judgment of McElwaine C.J. (Straits Settlements), in *Rex* v. *Wong Kiang Chin*[2] in which the learned Chief Justice said that:

"Section 428 of the Criminal Procedure Code must be strictly observed before a certificate under it can be admitted in evidence. The section is for obvious reasons a very drastic departure from the usual rules of evidence. The certificate under it is conclusive and cross-examination with regard to the certificate is not permitted save with the permission of the court."

They also contended that under section 428 it was not possible for them to give notice of any challenge to such a document as was possible under section 427 which is *in pari materia* with section 399 of the Criminal Procedure Code (F.M.S. Cap. 6) and on this analogy, proof must be forthcoming that the officer was one duly authorised in writing.

After consideration, I take the view however that this argument is with respect fallacious. While admittedly there was no provision for cross-examination on the contents of the document as in section 427, an application could be made for the court's discretion to allow cross-examination and the time for making this application could be before or during the trial. While, as was said by McElwaine C.J. it was "unlikely that a court would permit cross-examination to disclose secret markings or indicia which experts know to look for on genuine notes," the court would perhaps be more ready to allow challenge of the certifier's authority. If it was therefore desired to argue